

Jon Givens

From: McIntosh, Scott [Scott.McIntosh@dlapiper.com]
Sent: Thursday, January 18, 2007 11:47 AM
To: Jon Givens
Cc: Dienelt, John; htrickey@jdolaw.com; dfvallentine@jdolaw.com; msinger@jdolaw.com; McIntosh, Scott
Subject: Letter Dated January 18, 2007



givens_l.pdf (193 KB)

Jon,

Please see attached letter in response to your email dated January 16, 2007.

Scott

Scott McIntosh

DLA Piper US LLP
1200 Nineteenth Street, NW
Washington, DC 20036-2412

202.861.3979 T
202.689.7417 F
scott.mcintosh@dlapiper.com

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Thank you.



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SCOTT MCINTOSH
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January 18, 2007

VIA E-MAIL AND REGULAR MAIL

Jon T. Givens, Esq.
Bankston Gronning O'Hara
601 W. 5th Avenue, Suite 900
Anchorage, AK 99501

Re: Your E-mail Dated January 16, 2007

Dear Jon:

I write in response to your email dated January 16, 2007. Your e-mail is a transparent attempt to improperly shift the blame to Defendants in connection with your decision to file a purported "joint memorandum" that was materially different than any prior draft of the "joint memorandum" that had been shared with counsel for Defendants and without our approval.

To briefly address a few of your points, in terms of timing, I sent you our proposed revisions to the "joint" portions of the memorandum you had drafted, to ensure they were stated in a more neutral manner, at 11:57 a.m. A.S.T. on January 5th, after I had waited for but received no response to my email sent on January 4th seeking a clarification about the draft. You claimed to have incorporated all of Defendants' comments on the joint portion. Incorporation of those comments would not have taken long, and we would have been willing to make them on our end if you had indicated that you were agreeing to them. In fact, we would have sent them as a redline document if you had sent us a word version of the document, rather than a PDF version. I sent you Defendants' insert regarding the identity of the Licensor at 1:51 p.m. A.S.T. That insert merely needed to be pasted into the document. After hearing nothing for a couple hours, I sent an email at 3:37 p.m. A.S.T. inquiring if the revised draft was coming soon. As to your reference to my "disappearance," after receiving no response whatsoever to my emails, including no indication about any time I might expect the revised draft and no indication that you were intending to file it at 5:00 p.m. A.S.T., with or without approval from Defendants' counsel, I left the office at 8:00 p.m. E.S.T., intending to coordinate with co-counsel, including local counsel, from home.



Jon T. Givens Esq.
January 18, 2007
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We are also mystified by your repeated references to a purported 5:00 p.m. A.S.T. deadline. I had already sent you an email at 4:58 p.m. A.S.T. stating that we were in the process of reviewing the draft that you sent at 4:07 p.m. A.S.T. Also, as indicated above, you never indicated that you were intending to file the "joint memorandum" at 5:00 p.m. A.S.T., with or without approval from Defendants' counsel. The electronic filing system can accept filings after 5:00 p.m., and there was adequate time to finalize a true "joint memorandum" if you had provided the proposed final version. You did not advise us that because you were out of state on vacation there were any constraints on filing of the joint memorandum. Additionally, you have not provided any reason why Mr. Bankston or Mr. Heaphey, or someone else in your firm, would not have been available after 5:00 p.m. A.S.T. If everyone in your firm who has worked on this case had a pressing need to leave at precisely 5:00 p.m. A.S.T. (even though you characterize my decision to head home at 8:00 p.m. as a "disappearance"), Jermain Dunnagan & Owens could have easily handled the filing. In fact, we were about to propose that when you informed us that it had already been filed.

Additionally, it was not reasonable for you to deem lack of an immediate response to emails you sent at 8:07 p.m. E.S.T. and 8:44 p.m. E.S.T. as authorization to file a version of the "joint memorandum" that you had never sent to Defendants' counsel. As indicated above, although I had left the office, I did send you an email at 4:58 p.m. A.S.T. indicating that we were reviewing the document. You did not attempt to contact Howard Trickey or Diane Vallentine to obtain their consent or to determine if we had any comments on the draft you sent at 4:07 p.m. A.S.T. You also did not attempt to contact John Dienelt or me on our cell phones. I can recall at least two occasions when you have called my cell phone when attempting to coordinate logistics relating to depositions. With all of these options available to you, a unilateral decision to file without awaiting a response from Defendants' counsel cannot be justified.

You also attempt to use the purported 5:00 p.m. A.S.T. deadline to suggest that in any further coordination over a true "joint memorandum," we should re-set the clock and limit ourselves to an hour to wrap up the memorandum. This is arbitrary and meaningless. As discussed above, there was no 5:00 p.m. deadline. Moreover, the version you sent at 4:07 p.m. A.S.T. was materially different than the version that you filed, so we did not even have an opportunity to consider the complete proposed "joint memorandum" before you filed it. Finally, our ability to review a memorandum which is supposed to be a "joint" submission should not be arbitrarily constrained by the time you sent us a non-final version of the memorandum. If you had sent it at 4:58 p.m. A.S.T. (the time I sent an email indicating that we were reviewing the draft), would you contend that we only had two minutes to review your draft, when it was nearly 9:00 p.m. E.S.T.?

However, having corrected some of the misstatements in your email, Defendants are willing to attempt to move forward in a productive manner. If you are prepared to admit that you made a mistake and acknowledge that you should not have filed the "joint memorandum"



Jon T. Givens Esq.
January 18, 2007
Page 3

without approval from Defendants' counsel and that you should have provided a complete copy of the proposed filing to Defendants' counsel (which would have put us on notice that you were intending to move into an exhibit language that we had expressly indicated should be removed from the memorandum, and would have put us on notice you were intending to file dozens of pages of exhibits), please withdraw the "joint memorandum" which you have attempted to convert to a unilateral memorandum through your filing of an Errata. We can then finish negotiating a joint memorandum that can be filed by this coming Monday, January 22nd.

Please let us know how you wish to proceed.

Sincerely,

A handwritten signature in black ink, appearing to read 'Scott McIntosh', with a long horizontal flourish extending to the left.

Scott McIntosh

cc: John Dienelt
Howard Trickey
Diane F. Vallentine
Matthew Singer

Jon Givens

From: McIntosh, Scott [Scott.McIntosh@dlapiper.com]
Sent: Wednesday, January 17, 2007 1:40 PM
To: Jon Givens
Cc: Dienelt, John; Sherri Lindfors; paul.gallagher@avisbudget.com
Subject: RE: Proposed Joint Memorandum

Jon, we will respond to your email below tomorrow.



Scott McIntosh
DLA Piper US LLP
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202.689.7417 F
scott.mcintosh@dlapiper.com
www.dlapiper.com

From: Jon Givens [mailto:JGivens@bankston.to]
Sent: Tuesday, January 16, 2007 7:30 PM
To: McIntosh, Scott
Cc: Dienelt, John; Sherri Lindfors; paul.gallagher@avisbudget.com; AK Rent A Car
Subject: RE: Proposed Joint Memorandum

Scott

I understood from your lack of response to my 1/5/07 email of 4:07pm, my secretary's email of 4:07pm and my email of 4:44pm that I had authority to file the joint memorandum regarding docket 297. When you did respond after the memorandum was filed at the close of business for the court and our office, I emailed you to determine if there was anything further which needed to be done with the filing at 5:04pm and 5:36pm to which you never responded. Instead, without contacting me to make any effort to do a notice or errata you filed a motion for sanctions on the following business day. Considering that after the 12/19/06 filing of docket 297 you never provided me a single word of text or edit to the joint reply until noon the day the filing was due (1/5/07) and at 2pm on the day the filing was due, I suspect it is your side who the court will sanction. You gentlemen knew I was out of state on vacation and you waited till the afternoon of the filing deadline to get me anything, then disappear in the final hour the filing has to get done, and then have the nerve to move for sanctions without making any effort to contact me to correct any perceived problem with the filing. Your conduct was not that of a professional.

Now you have filed docket 305 asking the court to tell you what you already know you should have done in the first place, contact me to correct any problem with the filing. Lets restart the clock when you disappeared. At that point you were doing your final review of the joint memorandum. Although you never responded with a single proposed modification, please do so. You have the last version(filed with the court) so send me any proposed edits you would like to make tomorrow. I can then review them and if they are agreeable we can file an errata, if appropriate.

As to your complaint about the word 'joint', that has already been changed by errata, even though the filing in point of fact was jointly authored as you drafted pages of the document which I did not edit at all. You also complained that

the document was over length, but you are simply wrong as the order said the memorandum was limited to 10 pages and as filed it was 7 pages. Just as with pleadings the local rule page limits apply to the pleading and not exhibits. The exhibits we filed on our position were appropriate. You also complained in your motion for sanctions that I did what you asked and removed language on who owns Alaska Rent a Car from the joint portion of the memo. I then put the language into our sides organizational chart. The statement is factually true as to the corporate ownership so what is your complaint? I don't get to edit your chart and you don't edit ours. So what other changes would you like to make to the joint filing? This can be a quick process as we were 1 hour away from filing when you disappeared so let's restart the clock and you provide tomorrow any edits of substance to the joint filing you would have made or proposed between 4:07 pm and the 5pm close of business. This is what you should have done on 1/5 or 1/8, rather than moving for sanctions.

As an aside I am requesting you withdraw the motion for sanctions as we will suggest to the court it is your side whom should be sanctioned for filing a frivolous sanction motion without even conferring with counsel or trying to correct the situation without court involvement. Just so I am clear you should not infer from anything in this email that I did anything inappropriate in filing the joint memorandum, as I believe everything we did was appropriate.

-----Original Message-----

From: Jon Givens
To: 'McIntosh, Scott'
Sent: 1/5/07 5:35 PM
Subject: RE: Proposed Joint Memorandum

What are you referring to?

-----Original Message-----

From: McIntosh, Scott
To: Jon Givens
Sent: 01/05/2007 17:15
Subject: RE: Proposed Joint Memorandum

No!

From: Jon Givens [<mailto:JGivens@bankston.to>]
Sent: Friday, January 05, 2007 9:13 PM
To: McIntosh, Scott
Subject: RE: Proposed Joint Memorandum

everything ok?

-----Original Message-----

From: McIntosh, Scott
To: Jon Givens
Sent: 01/05/2007 16:58
Subject: Re: Proposed Joint Memorandum

I had left the office by the time you sent. Am trying to do a quick review now.

Scott McIntosh

Sent from my BlackBerry Wireless Handheld (www.BlackBerry.net)

-----Original Message-----

From: Jon Givens <JGivens@bankston.to>
To: McIntosh, Scott
Sent: Fri Jan 05 20:44:14 2007
Subject: RE: Proposed Joint Memorandum

I assume we can simply file the joint reply under my signature.

-----Original Message-----

From: McIntosh, Scott
To: Jon Givens
Cc: Jana Vanderbrink; Dienelt, John
Sent: 01/05/2007 15:36
Subject: Proposed Joint Memorandum

Is the revised draft almost ready for our review?

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Scott McIntosh

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Thank you.

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Thank you.

Jon Givens

From: Jon Givens
Sent: Wednesday, January 17, 2007 2:50 PM
To: 'McIntosh, Scott'
Cc: 'Dienelt, John'; Sherri Lindfors; 'paul.gallagher@avisbudget.com'; Jon Givens
Subject: RE: Proposed Joint Memorandum

Scott

I dont want to make an errata, if there is anything to add, a timely reinvention of the wheel. If you had additions on 1/5/07 to the 4:07pm draft they would have had to be in within a half hour to make a filing, even if they were agreeable. I await your response.

Thanks
Jon

-----Original Message-----

From: McIntosh, Scott
To: Jon Givens
Cc: Dienelt, John; Sherri Lindfors; paul.gallagher@avisbudget.com
Sent: 1/17/07 1:40 PM
Subject: RE: Proposed Joint Memorandum

Jon, we will respond to your email below tomorrow.

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Page 9 of 12

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To: Jon Givens

EXHIBIT 4
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To: Jon Givens
Cc: Jana Vanderbrink; Dienelt, John
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